

**ASSEMBLY BILL**

**No. 1153**

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**Introduced by Assembly Member Garcia**

February 23, 2007

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An act to amend Sections 18021.7, 18046, 18050, 18051, 18060.5, 18065, and 18070.3 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1153, as introduced, Garcia. Housing: mobilehomes.

The Mobilehomes-Manufactured Housing Act of 1980 sets forth conditions and requirements regarding the transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome.

This bill would require every applicant for an occupational license to submit fingerprints, as specified. This bill would impose new conditions with respect to probationary licenses, business practices, and automatic cancellation of licenses and permits, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 18021.7 of the Health and Safety Code
- 2 is amended to read:
- 3 18021.7. (a) (1) In addition to other remedies provided in this
- 4 part, the Director of Housing and Community Development or his
- 5 or her designee may issue a citation that assesses a civil penalty
- 6 payable to the department to any licensee who violates Section
- 7 18021.5, 18029.6, or 18030, subdivision (b) of Section 18032,

1 Section 18035, 18035.1, 18035.2, 18035.3, 18036, 18039, 18045,  
2 18045.5, 18045.6, 18046, *18051 (with respect to any condition*  
3 *under which a probationary license was issued)*, or 18058,  
4 subdivision (a) of Section 18059, subdivision (b) of Section  
5 18059.5, subdivision (c) of Section 18060, subdivision (c) of  
6 Section 18060.5, Section 18061, subdivision (d), (i), or (j) of  
7 Section 18061.5, subdivision (a) or (b) of Section 18062,  
8 subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 18062.2,  
9 subdivision (c) of Section 18063, or Section 18080.5.

10 (2) A violation of subdivision (d) of Section 18060.5 is also  
11 cause for citation if both the dealer and the manufacturer receive  
12 written notice of a warranty complaint from the complainant, from  
13 the department, or another source of information, and, at a  
14 minimum, the 90-day period provided for correction of substantial  
15 defects pursuant to Section 1797.7 of the Civil Code has expired.

16 (3) Each citation and related civil penalty assessment shall be  
17 issued no later than one year after discovery of the violation.

18 (b) The amount of any civil penalty assessed pursuant to  
19 subdivision (a) shall be one hundred dollars (\$100) for each  
20 violation, but shall be increased to two hundred fifty dollars (\$250)  
21 for each subsequent violation of the same prohibition for which a  
22 citation for the subsequent violation is issued within one year of  
23 the citation for the previous violation. The violation or violations  
24 giving cause for the citation shall be corrected if applicable, and  
25 payment of the civil penalty shall be remitted to the department  
26 within 45 days of the date of issuance of the citation. Civil penalties  
27 received by the department pursuant to this section shall be  
28 deposited in the Mobilehome-Manufactured Home Revolving  
29 Fund.

30 (c) Any person or entity served a citation pursuant to this section  
31 may petition for, and shall be granted, an informal hearing before  
32 the director or his or her designee. The petition shall be a written  
33 request briefly stating the grounds for the request. Any petition to  
34 be considered shall be received by the department within 30 days  
35 of the date of issuance of the citation.

36 (d) Upon receipt of a timely and complying petition, the  
37 department shall suspend enforcement of the citation and set a  
38 time and place for the informal hearing and shall give the licensee  
39 written notice thereof. The hearing shall commence no later than  
40 30 days following receipt of the petition or at another time

1 scheduled by the department pursuant to a request by the licensee  
2 or department if good and sufficient cause exists. If the licensee  
3 fails to appear at the time and place scheduled for the hearing, the  
4 department may notify the licensee in writing that the petition is  
5 dismissed and that compliance with terms of the citation shall  
6 occur within 10 days after receipt of the notification.

7 (e) The department shall notify the petitioner in writing of its  
8 decision and the reasons therefor within 30 days following  
9 conclusion of the informal hearing held pursuant to this section.  
10 If the decision upholds the citation, in whole or in part, the licensee  
11 shall comply with the citation in accordance with the decision  
12 within 30 days after the decision is mailed by the department.

13 (f) Nothing in this section shall be construed to preclude  
14 remedies available under other provisions of law.

15 SEC. 2. Section 18046 of the Health and Safety Code is  
16 amended to read:

17 18046. (a) An “agent” for purposes of this section and Section  
18 18025, means a dealer or salesperson licensed pursuant to this part,  
19 or a real estate broker or salesperson licensed pursuant to Division  
20 4 (commencing with Section 10000) of the Business and  
21 Professions Code.

22 (b) A “seller” for the purposes of this section and Section 18025  
23 means the lawful owner of the manufactured home or mobilehome  
24 offering the home for sale. For purposes of this section and Section  
25 18025, the exemptions enumerated by Section 1102.2 of the Civil  
26 Code shall be applicable to the transfer of a manufactured home  
27 or mobilehome.

28 (c) The sale of used manufactured homes or mobilehomes by  
29 a real estate broker or salesperson licensed under Division 4  
30 (commencing with Section 10000) of the Business and Professions  
31 Code shall be subject to Section 2079 of the Civil Code.

32 (d) It is the duty of a dealer or salesperson, licensed under this  
33 chapter, to a prospective buyer of a used manufactured home or  
34 mobile home, subject to registration pursuant to this part, to  
35 conduct a reasonably competent and diligent visual inspection of  
36 the home offered for sale and to disclose to that prospective buyer  
37 all facts materially affecting the value or desirability of the home  
38 that an investigation would reveal, ~~if that dealer or salesperson has~~  
39 ~~a written contract with the seller to find or obtain a buyer or is~~  
40 *including, but not limited to*, a dealer or salesperson who acts in

1 cooperation with others to find and obtain a buyer. Where a transfer  
2 disclosure statement is required pursuant to subdivision (b) of  
3 Section 1102 of the Civil Code, a dealer or salesperson shall  
4 discharge that duty by completing the agent's portion of the transfer  
5 disclosure statement that a seller prepares and delivers to a  
6 prospective buyer pursuant to subdivision (b) of Section 1102 of  
7 the Civil Code. If no transfer disclosure statement is required, but  
8 the transaction is not exempt under Section 1102.2 of the Civil  
9 Code, a dealer shall discharge that duty by completing and  
10 delivering to the prospective buyer an exact reproduction of  
11 Sections III, IV, and V of the transfer disclosure statement required  
12 pursuant to subdivision (b) of Section 1102 of the Civil Code.

13 SEC. 3. Section 18050 of the Health and Safety Code is  
14 amended to read:

15 18050. (a) Every applicant for an occupational license shall  
16 make application to the department for a license containing a  
17 general distinguishing number.

18 (b) The applicant shall submit all information as may be  
19 reasonably required by the department in carrying out the  
20 provisions of this chapter, including, but not limited to, proof of  
21 successful completion within the previous six months of the  
22 appropriate department examination and proof of his or her status  
23 as a bona fide manufacturer, distributor, dealer, dealer branch, or  
24 salesperson.

25 (c) Every applicant shall submit an application to the department  
26 on the forms prescribed by the department. The applicant shall  
27 provide the department with information as to the applicant's  
28 character, honesty, integrity, and reputation, as the department  
29 may consider necessary. The department, by regulation, shall  
30 prescribe what information is required of the applicant for the  
31 purposes of this subdivision.

32 (d) Upon receipt of a complete application for a license which  
33 is accompanied by the appropriate fee, the department shall, within  
34 120 days, make a thorough investigation of the information  
35 contained in the application.

36 (e) *Every applicant shall submit fingerprints in the format*  
37 *required by the department to be used for the purpose of a criminal*  
38 *history records check of the applicant by state and federal law*  
39 *enforcement authorities, including, but not limited to, the Federal*  
40 *Bureau of Investigation. Results of any records checked by federal*

1 *law enforcement authorities shall not be released except in*  
2 *accordance with federal requirements.*

3 SEC. 4. Section 18051 of the Health and Safety Code is  
4 amended to read:

5 18051. (a) Except where the provisions of this part require the  
6 refusal to issue a license, the department may issue a probationary  
7 license subject to conditions to be observed by the licensee in the  
8 exercise of the privilege granted. The conditions to be attached to  
9 the exercise of the privilege shall not appear on the face of the  
10 probationary license, but shall, in the judgment of the department,  
11 be in the public interest and suitable to the qualifications of the  
12 applicant as disclosed by the application and investigation by the  
13 department of the information contained therein.

14 (b) Within 60 days after issuance of a probationary license, the  
15 applicant may demand, in writing, a hearing before the director or  
16 his or her representative.

17 (c) *Any violation of the conditions imposed by the department*  
18 *pursuant to this section may be cause for a citation that assesses*  
19 *a civil penalty pursuant to Section 18021.7.*

20 (d) *Any violation of the conditions imposed by the department*  
21 *pursuant to this section may be cause for automatic cancellation*  
22 *of a license pursuant to Section 18065.*

23 SEC. 5. Section 18060.5 of the Health and Safety Code is  
24 amended to read:

25 18060.5. With respect to business practices, it is unlawful to  
26 do any of the following:

27 (a) Knowingly purchase, sell, or otherwise acquire or dispose  
28 of a stolen manufactured home, mobilehome, or commercial  
29 modular.

30 (b) Violate any of the terms or provisions of regulations  
31 promulgated under the authority of Section 18015.

32 (c) Cause the state or any person to suffer any loss or damage  
33 by reason of any fraud or deceit practiced on them or fraudulent  
34 representations made to any person in the sale or purchase of a  
35 manufactured home, mobilehome, or commercial modular or parts  
36 or accessories thereof.

37 (d) Violate any of the terms and conditions of Chapter 3  
38 (commencing with Section 1797) of Title 1.7 of Part 4 of Division  
39 3 of the Civil Code.

1 (e) Move a manufactured home, mobilehome, or commercial  
2 modular subject to registration pursuant to this part from a  
3 mobilehome park or other site of installation to another location,  
4 without obtaining from the legal owner, written consent for the  
5 move as prescribed in Section 18099.5.

6 (f) Include as an added cost to the selling price of a  
7 manufactured home, mobilehome, or commercial modular, an  
8 amount for licensing or transfer of title of the manufactured home,  
9 mobilehome, or commercial modular, which amount is not due to  
10 the state unless, prior to the sale, the amount has been paid by a  
11 dealer to the state in order to avoid penalties that would have  
12 accrued because of late payment of those fees. However, a dealer  
13 may collect from the second purchaser of a manufactured home,  
14 mobilehome, or commercial modular, a prorated fee based upon  
15 the number of months remaining in the registration year for that  
16 manufactured home, mobilehome, or commercial modular, if the  
17 manufactured home, mobilehome, or commercial modular was  
18 previously sold by the dealer and the sale was subsequently  
19 rescinded and all the fees that were paid, as required by this part  
20 and Chapter 2 (commencing with Section 10751) of Division 2 of  
21 the Revenue and Taxation Code, were returned to the first  
22 purchaser of the manufactured home, mobilehome, or commercial  
23 modular.

24 (g) Participate in the sale of a manufactured home, mobilehome,  
25 or commercial modular reported to the department pursuant to this  
26 part without making the return and payment of any sales tax due  
27 and required by Section 6451 of the Revenue and Taxation Code.

28 (h) Fail to exercise reasonable supervision over the activities  
29 of employees who negotiate or promote the sale of manufactured  
30 homes, mobilehomes, or commercial modulars.

31 (i) Display for sale, offer for sale, or sell, a manufactured home,  
32 mobilehome, or commercial modular, representing that  
33 manufactured home, mobilehome, or commercial modular to be  
34 of a year model different from the year model designated at the  
35 time of manufacture or first assembly as a completed manufactured  
36 home, mobilehome, or commercial modular.

37 (j) Directly or indirectly authorize or advise another licensee to  
38 change the year model of a manufactured home, mobilehome, or  
39 commercial modular in the inventory of the other licensee.

1 (k) Fail, at the time that the seller enters into a net listing  
2 agreement, to disclose in writing as part of the listing agreement  
3 in 12-point boldface type all of the following:

4 (1) That a buyer's offer may be in excess of the amount that the  
5 seller has agreed to accept as a purchase price in the listing  
6 agreement.

7 (2) That the dealer may retain any amount in excess of the  
8 amount the seller has agreed to as the purchase price in the listing  
9 agreement as the dealer's compensation or commission.

10 (3) That additional costs or payments involved in the sales  
11 transaction may be deducted or made from the amount the seller  
12 has agreed to accept as the purchase price in the listing agreement  
13 by the close of escrow.

14 (4) *That if the negotiated sale price is based on comparable*  
15 *sales, the dealer shall provide the seller with copies of acceptable*  
16 *documentation to support the representation prior to the seller*  
17 *executing the net listing agreement.*

18 (5) *That the seller is permitted to cancel the net listing*  
19 *agreement within 72 hours after execution by the seller without*  
20 *any penalty or cost by notifying the dealer in writing.*

21 (l) Fail, within three days after the date a buyer's written offer  
22 to purchase a mobilehome or manufactured home that is not a new  
23 mobilehome or manufactured home is accepted, but no less than  
24 48 hours prior to the close of escrow or transfer of title to the  
25 mobilehome or manufactured home from the seller to the buyer,  
26 to disclose to the seller in a document, signed or initialed by the  
27 seller and the dealer, that is an addendum to the disclosure required  
28 in subdivision (k), the exact amount of the buyer's offer and the  
29 specific amounts of any commission. The dealer shall submit a  
30 copy of the disclosure required by subdivision (k) and this  
31 subdivision into escrow and maintain, at the dealer's place of  
32 business, a copy of that disclosure for three years from the date of  
33 sale. The escrow agent shall ensure that the disclosure deposited  
34 into escrow is executed and complete. However, nothing in this  
35 subdivision shall be construed to require the escrow agent to be  
36 responsible for determining the accuracy of any of the statements  
37 in that disclosure.

38 SEC. 6. Section 18065 of the Health and Safety Code is  
39 amended to read:

1 18065. The licenses or permits provided for in this part shall  
2 be automatically canceled upon any of the following events:

3 (a) The abandonment of the established place of business of the  
4 licensee or the change thereof without notice to the department as  
5 provided in this part.

6 (b) The voluntary or involuntary surrender for any cause by the  
7 licensee of the license. However, the surrender or cessation of  
8 business by the licensee, or the suspension of the corporate charter  
9 of the licensee by the state, shall not prevent the filing of an  
10 accusation for revocation or suspension of the surrendered license  
11 as provided in Section 18058 or the department's decision that the  
12 license should be suspended or revoked. Furthermore, this  
13 determination may be considered in granting or refusing to grant  
14 any subsequent license authorized by this part to the licensee,  
15 copartner, or any officer, director, or stockholder of the prior  
16 licensee.

17 (c) Notification that the person designated as licensee has  
18 changed.

19 (d) Suspension or cancellation of the corporate charter of the  
20 licensee by the state.

21 (e) Failure of a licensee to file an application for renewal for  
22 the license or permit before the date of expiration of the current  
23 license or permit.

24 (f) Submittal of a check, draft, or money order to the department  
25 for a license or license renewal fees due the department which is  
26 thereafter dishonored or refused payment upon presentation and  
27 which fees and penalty are not thereafter paid by cash, money  
28 order, or cashier's check prior to the expiration of the license.

29 (g) *Violation of any of the conditions imposed by the department*  
30 *pursuant to Section 18051.*

31 SEC. 7. Section 18070.3 of the Health and Safety Code is  
32 amended to read:

33 18070.3. (a) When any person (1) who has purchased a  
34 manufactured home for a personal or family residential or  
35 investment purpose or (2) who has sold a manufactured home for  
36 a personal or family residential or investment purpose, obtains a  
37 final judgment against any manufactured home manufacturer,  
38 manufactured home dealer or salesperson, or other seller or  
39 purchaser, and the judgment is based on the grounds of (1) failure  
40 to honor warranties or guarantees, (2) fraud or willful



1 misrepresentation related to any financial provision, (3) fraud or  
2 willful misrepresentation of the kind or quality of the product sold  
3 or purchased, (4) conversion, (5) any willful violation of any other  
4 provision of this part, including the provisions regulating escrow  
5 accounts, or regulations adopted pursuant to this part, or (6)  
6 violation of Chapter 3 (commencing with Section 1797) of Title  
7 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual  
8 and direct loss directly arising out of any transaction that occurs  
9 on or after January 1, 1985, the person, upon termination of all  
10 proceedings, including appeals, may file a claim with the  
11 department for an order directing payment out of the fund for the  
12 amount of actual and direct loss in the transaction.

13 (b) If any person either purchases a manufactured home used  
14 for a personal or family residential or investment purpose from,  
15 or sells a manufactured home used for a personal or family  
16 residential or investment purpose to, a person or entity who is or  
17 has been the subject of a bankruptcy proceeding, the person may  
18 file a claim with the department for an order directing payment  
19 out of the fund for the actual and direct loss in the transaction based  
20 on (1) the failure to honor warranties or guarantees, (2) fraud or  
21 willful misrepresentation related to any financial provision, (3)  
22 fraud or willful misrepresentation of the kind or quality of product  
23 purchased or sold, (4) conversion, (5) willful violation of any other  
24 provision in this part, including the provisions regulating escrow  
25 accounts, or (6) violation of Chapter 3 (commencing with Section  
26 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code,  
27 resulting in an actual and direct loss directly arising out of any  
28 transaction that occurs on or after January 1, 1985.

29 (c) (1) The total amount of the claim shall not exceed the  
30 amount of actual and direct loss that remains unreimbursed from  
31 any source.

32 (2) The maximum payment ordered under this section, with  
33 respect to any one sales transaction on a new or used manufactured  
34 home, shall be the amount of the actual and direct loss, as  
35 determined by the department based on information in the  
36 possession of the department and information provided by the  
37 claimant or claimants. In no event shall the actual payment relating  
38 to a single transaction exceed seventy-five thousand dollars  
39 (\$75,000).

(3) Notwithstanding any other provision of this chapter, a person who purchases or sells a manufactured home for an investment purpose may receive payment from the fund for that purpose only once. A person who has received payment from the fund for the purchase or sale of a manufactured home for an investment purpose shall henceforth be ineligible to make a claim under this chapter, either as a natural person or as a member of a partnership, as an officer or director of a corporation, as a member of a marital community, or in any other capacity.

(d) Prior to payment of any claim against the fund, the claimant or claimants shall have first:

(1) If the claim is based on a final judgment, diligently pursued collection efforts against all the assets of the judgment debtor, or presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but is not limited to, a description of the searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to the satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have assets applied to satisfy the judgment.

(2) If the claim is not based on a final judgment, presented evidence satisfactory to the department of either of the following:

(A) That the licensee *or other person or entity* is or has been the subject of bankruptcy proceedings and, for purposes of any civil litigation or claims in bankruptcy proceedings, has assigned to the department any interest in the actual and direct loss described in subdivision (c) in the amount that the claimant or claimants recover from the fund.

(B) That the claimant's claim is consistent with this chapter and the claimant had presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but not be limited to, a description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets eligible to be sold or applied to the satisfaction of the judgment, an itemized valuation

1 of the assets discovered, and the results of actions by the claimant  
2 to have the assets applied to satisfaction of the judgment.

3 (3) If the claim is based upon a violation of a provision within  
4 a warranty provided pursuant to Chapter 3 (commencing with  
5 Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code,  
6 demonstrated evidence satisfactory to the department that the  
7 claimant has been denied full compensation or correction under  
8 the warranty after the claimant has attempted to exercise his or her  
9 rights pursuant to the warranty.

10 (e) A claim against the fund shall be filed with the department  
11 within the following time periods:

12 (1) If the claim is based on a final judgment, within two years  
13 from the date of the judgment.

14 (2) If the claim is not based on a final judgment, within two  
15 years from the termination of bankruptcy proceedings or two years  
16 from the date of sale as determined by subdivision (a) of Section  
17 18070.2, or within two years of discovery of the violations causing  
18 actual and direct losses pursuant to this article but no longer than  
19 five years after the date of sale as determined by subdivision (a)  
20 of Section 18070.2, whichever event occurs later.

21 (f) When any person files a claim for an order directing payment  
22 from the fund, the claimant shall mail, by first-class mail, a copy  
23 of that claim to the last known address of the judgment debtor.  
24 The department shall conduct a review of the application and other  
25 pertinent information in its possession, and it may issue an order  
26 directing payment out of the fund as provided in subdivisions (a)  
27 to (e), inclusive, subject to the limitations of subdivisions (a) to  
28 (e), inclusive, if the claimant or claimants show all of the following:

29 (1) That he or she is not a spouse of the judgment debtor, the  
30 bankrupt licensee *or other person or entity*, or a person representing  
31 the spouse.

32 (2) That he or she is making an application within the time  
33 specified in subdivision (e).

34 (3) That the claimant has satisfied the applicable requirements  
35 of subdivision (d).

36 (4) That, if the claimant is a seller of a manufactured home used  
37 by the seller for personal, family, or household purposes, the  
38 claimant made a good faith effort to adequately secure the debt  
39 resulting from the sale of the manufactured home and with respect  
40 to which the claim is made. For purposes of this paragraph, a good

1 faith effort to secure the debt may be demonstrated by, but shall  
2 not be limited to, providing the department with a promissory note  
3 signed by the debtor and which, pursuant to the terms thereof, is  
4 secured by collateral with a reasonable value at least equal to the  
5 debt evidenced by the promissory note.

6 (g) Upon an order of the department directing that payment be  
7 made out of the fund, the Controller is authorized to draw a warrant  
8 for the payment of the amount of the claim approved by the  
9 department pursuant to this section.

10 (h) In dispersing moneys from the fund, the department is  
11 authorized to give priority to claimants who have attempted to  
12 purchase or sell a manufactured home for a personal or family  
13 residential purpose.

14 (i) All claims to the fund that are received on or after January  
15 1, 1993, shall be processed, and a determination made, within one  
16 year of submission of a properly completed application.

17 (j) The department, upon request by a Member of the  
18 Legislature, shall provide the following information: the number  
19 of claims to the fund, number of claims processed and decided  
20 within one year of their application date and submission of a  
21 properly completed application, the amount of fund money paid  
22 to claimants, and the amount of fund money allocated for the  
23 department's costs.